

Ilan D. Scharf, Esq. (NY Bar No. 4042107)
Jason S. Pomerantz, Esq. (Admitted *pro hac vice*)
Gail S. Greenwood, Esq. (Admitted *pro hac vice*)
PACHULSKI STANG ZIEHL & JONES LLP
780 Third Avenue, 34th Floor
New York, New York 10017
Telephone: (212) 561-7700
Facsimile: (212) 561-7777

Counsel to Plaintiff RDC Liquidating Trust

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK**

In re:

ROCHESTER DRUG CO-OPERATIVE, INC.

Debtor.

Chapter 11

Case No. 20-20230 (PRW)

Advisory Trust Group, LLC, as trustee of the RDC
LIQUIDATING TRUST,

Plaintiff,

v.

LAURENCE F. DOUD III, DONALD ARTHUR,
STEPHEN GIROUX, CHRISTOPHER CASEY,
GARRY MROZEK, RICHARD KLENK,
SHERWOOD KLEIN, JOSEPH LECH, BORIS
MANTELL, JOSEPH SCOTT MISKOVSKY, and
PAUL PAGNOTTA, individually as members of the
Debtor's Board of Directors,

Defendants.

Adv. Proc. No. 22-02073 (PRW)

**CERTIFICATION AND REPORT OF RULE 26(f) FRCP/RULE 7026 FRBP
CONFERENCE AND DISCOVERY PLAN**

Advisory Trust Group, LLC, in its capacity as the Liquidating Trustee of the RDC Liquidating Trust (“**Plaintiff**”) and Laurence F. Doud III, Donald Arthur, Stephen Giroux, Christopher Casey, Garry Mrozek, Richard Klenk, Sherwood Klein, Joseph Lech, Boris Mantell, Joseph Scott Miskovsky, and Paul Pagnotta (collectively, “**Defendants**”) submit the following report and discovery plan in accordance with the Rule 7026 of the Federal Rules of Bankruptcy

Procedure (“**FRBP**”), incorporating Rule 26 of the Federal Rules of Civil Procedure (“**FRCP**”), and the Court’s guidelines.

1. **Certification Concerning Discovery Plan.**

A discovery plan is needed or useful in this case and is outlined below.

2. **Certification of Conference.** Pursuant to Rule 26(f) FRCP/Rule 7026 FRBP, meetings were held on May 4, 2022, May 18, 2022, May 19, 2022, and July 15, 2022 by telephone by and among the undersigned counsel for the designated parties in this adversary proceeding.

3. **Pre-Discovery Disclosures.** The information and documents required by Rule 26(a)(1) FRCP and Rule 7026 FRBP will be exchanged by August 15, 2022. The undersigned parties agree that, to the extent reasonably available, documents and communications produced in connection with the above-captioned action will be produced in an original format which preserves all associated metadata or includes production in native format or images with a corresponding load file containing all metadata.

4. **Discovery Plan.** Except as otherwise noted, the parties jointly propose to the Court the following discovery plan:

a. All all non-expert discovery will be completed within 11 months of the Rule 16 Conference, by July 1, 2023. To the extent that any date falls on a Saturday, Sunday, or holiday, the parties agree that the deadline is close of business on the following weekday.

b. All expert witness disclosures required by Rule 26(a)(2) will be exchanged by [60 days after fact discovery] September 1, 2023. Any expert report intended solely to contradict or rebut evidence on the same subject matter identified by another party under Rule 26(a)(2)(B) or (C) must be disclosed by [30 days after initial reports] October 1, 2023. All expert witness discovery will be completed by [45 days after rebuttal reports] November 15, 2023.

c. Discovery limits: At this time, the parties have not identified any limits that need to be placed on the number of depositions by each side. The parties agree that non expert and expert discovery shall be conducted as reasonably necessary in accordance with FRCP.

d. Stipulated Protective Order: The parties anticipate negotiation of a stipulated confidentiality and protective order and will submit a proposed order on or before August 15, 2022 for the Court’s approval and signature

5. **Dispositive Motions.** All potentially dispositive motions should be filed within 60 days after the close of expert discovery, and not before the completion of the Rule 16 Conference, by January 15, 2024.

6. **Settlement:**

[☐] is likely.

[☐] is unlikely.

[☒] cannot be evaluated prior to December 15, 2022.

[☒] the parties consent to the Court’s active participation in settlement discussions.

7. **Trial.** The case should be ready for trial in April 2024 and should take approximately 3-5 days for Plaintiff and 10 days for Defendants.

8. The Defendants (except Mr. Doud) do not consent to this Court entering final judgment.

Date: July 19, 2022

PACHULSKI STANG ZIEHL & JONES LLP

/s/ Gail S. Greenwood

Ilan D. Scharf
Jason S. Pomerantz (admitted *pro hac vice*)
Gail S. Greenwood (admitted *pro hac vice*)
780 Third Avenue, 34th Floor
New York, NY 10017
(212) 561-7700
Email: ischarf@pszjlaw.com
jpomerantz@pszjlaw.com
ggreenwood@pszjlaw.com

Counsel to the RDC Liquidating Trust

Date: July 19, 2022

JANEY LAW FIRM, PC

/s/Derrelle M. Janey

Derrelle M. Janey
111 Broadway, Suite 701
New York, NY 10006
(646) 289-5276
Email: djaney@thejaneylawfirm.com

Counsel to Defendant Laurence F. Doud III

Date: July 19, 2022

DAVIDSON FINK LLP

/s/Richard N. Franco

Richard N. Franco
400 Meridian Centre Blvd. Suite 200
Rochester, NY 14618
(585) 546-6448
Email: rfranco@davidsonfink.com

Counsel to Defendant Christopher Casey

Date: July 19, 2022

BRENNAN, MANNA & DIAMOND, LLC

/s/Duriya Dhinojwala

Duriya Dhinojwala
Kathryn E. Hickner

75 E. Market Street
Akron, OH 44308
(330) 253-5790
Email: ddhinojwala@bmdllc.com
khickner@bmdllc.com

*Counsel to Defendants Garry Mrozek, Joseph
Lech, Boris Mantell, and Joseph Scott Miskovsky*

Date: July 19, 2022

KENNEY SHELTON LIPTAK NOWAK LLP

/s/Jeffrey A. Carlino

Jeffrey A. Carlino
Alice J. Cunningham
The Calumet Building
233 Franklin Street
Buffalo, NY 14202
(716) 858-3801
Email: jacarlino@kslnlaw.com
ajcunningham@kslnlaw.com

*Counsel to Defendants Don Arthur, Stephen
Giroux, and Richard Klenk*

Date: July 19, 2022

WOODS OVIATT GILMAN LLP

/s/Warren B. Rosenbaum

Warren B. Rosenbaum
William E. Brueckner
Timothy P. Lyster
1900 Bausch & Lomb Place
Rochester, NY 14604
(585) 987-2800
Email: wrosenbaum@woodsoviatt.com
wbrueckner@woodsoviatt.com
tlyster@woodsoviatt.com

*Counsel to Defendants Sherwood Klein and Paul
Pagnotta*